NO. 84-1291

Office - Supreme Court, U.S.
FILED
FEB 4 1985
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In the Supreme Court of the United States

OCTOBER TERM, 1984

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., a Florida corporation, MARK LOSEE, RALPH SNELGROVE, DREW APGAR, and EVERETT HENSLEY, General Partners d/b/a BAREFOOT MAILMAN, LTD., a Florida limited partnership, BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., a Florida non-profit organization, BAREFOOT MANAGEMENT COMPANY, a Florida corporation, CAXTON, LTD., a British Virgin Island corporation, and MARK LOSEE and DREW APGAR, individually,

Petitioners,

v.

DONALD I. BARKHEIMER, II, PEGGY A. BARKHEIMER, his wife, DONALD L. BARKHEIMER, G. LOUISE BARKHEIMER, his wife, HARRY RANKER, VIRGINIA RANKER, his wife, DENNIS REED, SANDRA REED, his wife, GENEVA L. BARKHEIMER, and JOSEPH D. FARISH, JR., and ROBERT V. ROMANI, d/b/a FARISH, FARISH & ROMANI,

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA SUPREME COURT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI VOL. I — APPENDICES A - H

HAL P. DEKLE, ESQ.
808 Landmark Bank Bldg.
412 Madison Street
Tampa, FL 33602

A B Letter Service, Inc., 327 Chartres St., New Orleans, La. (504) 581-5555

**SPRINGER, SPRINGER,
MIGHDOLL & SALNICK**
**3003 South Congress Avenue
Palm Springs, FL 33461**

**EDNA L. CARUSO, P.A.
Suite 4B-Barristers Bldg.
1615 Forum Place
West Palm Beach, FL 33401
305-686-8010**

Attorneys for Petitioners

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APPENDIX "A"
COMPLAINT with attached STIPULATION

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY.

CIVIL DIVISION
CASE NO. 823158 CA(L)01 E

DONALD I. BARKHEIMER, II, PEGGY A. BARKHEIMER, his wife, DONALD I. BARKHEIMER, G. LOUISE BARKHEIMER, his wife, HARRY RANKER, VIRGINIA RANKER, his wife, DENNIS REED, SANDRA REED, his wife, GENEVA L. BARKHEIMER, and JOS. D. FARISH, JR. and ROBERT V. ROMANI, d/b/a FARISH, FARISH & ROMANI,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., a Florida corporation, MARK LOSEE, RALPH SNELGROVE, DREW APGAR, and EVERETT HENSLEY, General Partners d/b/a BAREFOOT MAILMAN, LTD., a Florida limited partnership, BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., a Florida non-profit organization, BAREFOOT MANAGEMENT COMPANY, a Florida corporation, CAXTON, LTD., a British Virgin Island corporation, and MARK LOSEE and DREW APGAR, individually,

Defendants

COMPLAINT

The Plaintiffs, DONALD I. BARKHEIMER, II, PEGGY A. BARKHEIMER, his wife, DONALD I. BARKHEIMER, G. LOUISE BARKHEIMER, his wife,

HARRY RANKER, VIRGINIA RANKER, his wife, DENNIS REED, SANDRA REED, his wife, GENEVA L. BARKHEIMER, and JOS. D. FARISH, JR. and ROBERT V. ROMANI, d/b/a FARISH, FARISH & ROMANI, sue the Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., a Florida corporation, MARK LOSEE, RALPH SNELGROVE, DREW APGAR, and EVERETT HENSLEY, General Partners d/b/a BAREFOOT MAILMAN, LTD., a Florida limited partnership, BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., a Florida non-profit organization, BAREFOOT MANAGEMENT COMPANY, a Florida corporation, CAXTON, LTD., a British Virgin Island corporation, and MARK LOSEE and DREW APGAR, individually, and allege:

COUNT I.

1. This is an action for declaratory relief under Chapter 86 of the Florida Statutes.

2. PARK AVENUE INVESTMENT & DEVELOPMENT, INC. is a Florida corporation with its principal office in Palm Beach County; it was doing business as a management company for Barefoot Mailman Resort and Hotel until sometime recently. Its initial directors were Everett Hensley, Ralph B. Snelgrove, Drew C. Apgar and Mark Losee.

3. BAREFOOT MANAGEMENT COMPANY is a Florida corporation doing business in Broward County as a management company for the Barefoot Mailman Hotel and Resort.

4. The BAREFOOT MAILMAN OWNERS ASSO-

CIATION, INC. is a Florida non-profit organization with its principal office in Palm Beach County. The initial officers of the BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. were Mark E. Losee, Ralph B. Snelgrove, Drew C. Apgar, and Everett R. Hensley.

5. The BAREFOOT MAILMAN, LTD. is a Florida limited partnership with its principal office in Palm Beach County, Florida, and is doing business in Broward County converting the Barefoot Mailman Hotel into the Barefoot Mailman Hotel and Resort, a timeshare ownership resort.

6. CAXTON, LTD. is an alien corporation holding a mortgage on the real property described herein known as Barefoot Mailman Hotel and Resort.

7. MARK E. LOSEE is a resident of Palm Beach County, Florida.

8. DREW C. APGAR is a resident of Palm Beach County, Florida.

9. On or about November 14, 1979, MARK E. LOSEE, EVERETT R. HENSLEY, RALPH B. SNELGROVE, and DREW C. APGAR formed a limited partnership named BAREFOOT MAILMAN, LTD., for the purpose of purchasing the Barefoot Mailman Hotel and converting that hotel into timeshare interests for sale. This property is located in Broward County, Florida, and is legally described as follows:

> All that part of GOVERNMENT LOT 4 in SECTION 17, TOWNSHIP 48, SOUTH, RANGE 43 EAST, lying between a line parallel to and 3200 feet south of (measured at right angles) the north

line of said SECTION 17, in a line parallel to and 3500 feet south of (measured at right angles) the said north line of SECTION 17, lying east of the easterly right-of-way of the intracoastal waterway; subject to the right-of-way of State Road A1A, as now located and constructed. LESS AND EXCEPT therefrom that portion of the described parcel lying west of the westerly line of the right-of-way of State Road A1A as now located and constructed.

10. The Defendant, BAREFOOT MAILMAN, LTD., transferred the above described real property to BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. by deed recorded on May 20, 1980, in the Official Records of Broward County, Florida, in Official Record Book 8924, page 48.

11. By agreement dated February 29, 1980, the BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. entered into a Management Contract with PARK AVENUE INVESTMENT & DEVELOPMENT, INC. whereby the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC. was employed to manage the development and marketing of the timeshare project known as Barefoot Mailman Hotel and Resort.

12. The Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., DREW APGAR and MARK LOSEE, solicited from the Plaintiffs, DONALD I. BARKHEIMER, II, PEGGY A. BARKHEIMER, his wife, DONALD I. BARKHEIMER, G. LOUISE BARKHEIMER, his wife, HARRY RANKER, VIRGINIA RANKER, his wife, DENNIS REED, SANDRA REED, his wife, and GENEVA L. BARKHEIMER (hereafter Original Plaintiffs), monies to be invested into

the Barefoot Mailman Hotel and Resort under a profit sharing plan.

13. The Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., defaulted under this profit sharing plan and executed promissory notes to the Original Plaintiffs for the deficiency due the Original Plaintiffs under the profit sharing investment plan.

14. The Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., defaulted under these promissory notes and actions were brought by the Original Plaintiffs in the Circuit Court of Palm Beach County to recover under these notes and to recover attorneys' fees. On or about September 17, 1981, a Stipulation was entered into between the Original Plaintiffs and the Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., MARK LOSEE and DREW APGAR, for settlement of the above referred to cases. A copy of this Stipulation is attached hereto as Exhibit A.

15. Under the terms of this Stipulation, the total claim of the Original Plaintiffs was set forth and a payment plan was agreed to. Under Paragraph 5 of this Stipulation, the claims of the Plaintiffs and their attorneys' fees to Plaintiffs, ROBERT V. ROMANI and JOS. D. FARISH, JR., were secured by timeshare unit weeks at the Barefoot Mailman Hotel and Resort. These unit weeks for security were to be conveyed free of encumbrances to the Plaintiffs in the manner set forth in the Declaration of Restrictions, Articles of Incorporation and By-Laws of the BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. The Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., MARK LOSEE and DREW APGAR, in their corporate and individual capacity,

warranted that the vacation share conveyances were executed with full authority of BAREFOOT MAILMAN, LTD. and BAREFOOT MAILMAN OWNERS ASSOCIATION, INC.

16. At the time this Stipulation was entered into, the Defendant, MARK LOSEE, was a general partner in BAREFOOT MAILMAN, LTD., and President of BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., and PARK AVENUE INVESTMENT & DEVELOPMENT, INC. The Defendant, DREW APGAR, was a general partner in BAREFOOT MAILMAN, LTD. and Secretary of BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. and PARK AVENUE INVESTMENT & DEVELOPMENT, INC. These Defendants had the authority as officers of these corporations and general partners to transfer these vacation share units to the Plaintiffs as security for the debt of PARK AVENUE INVESTMENT & DEVELOPMENT, INC. and so represented they had this authority to the Plaintiffs.

17. These vacation share conveyances were to be held in escrow by the Original Plaintiffs' attorneys. In the event that the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., defaulted under the terms of the Stipulation, the vacation share conveyances were to become immediately effective, and the Plaintiffs were to become entitled to all of the rights of unit owners.

18. This Stipulation was recorded on September 23, 1981, in Official Record Book 9808 at Page 33, of the Official Records of Broward County, Florida.

19. Along with the conveyance of the vacation share conveyances, a sample of the non-disturbance certificate

was transferred, executed by the Defendants, BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., BAREFOOT MAILMAN, LTD., and CAXTON, LTD., as the mortgagee, for the benefit of all the unit owners. This non-disturbance certificate was recorded on November 19, 1981, at Official Record Book 9900 at Page 333, Official Records of Broward County, Florida.

20. A copy of the vacation share conveyance to DONALD BARKHEIMER and LOUISE BARKHEIMER is attached hereto as Exhibit "B". A copy of the vacation share conveyance to JOS. D. FARISH, JR. and ROBERT V. ROMANI is attached hereto as Exhibit "C". A copy of the non-disturbance certificate is attached hereto as Exhibit "D".

21. The Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., failed to make any of the payments agreed to under the Stipulation.

22. Under the terms of the Stipulation, the Plaintiffs became entitled to all of the rights of a unit owner of the Barefoot Mailman Hotel and Resort as set forth in Declaration of Restrictions, Articles of Incorporation and By-Laws of the BAREFOOT MAILMAN OWNERS ASSOCIATION, INC.

23. The Defendants, BAREFOOT MAILMAN, LTD., BAREFOOT MANAGEMENT COMPANY, and CAXTON, LTD., have demanded that the Plaintiffs deliver all the unit weeks of the Barefoot Mailman Hotel and Resort which they received as security for the stipulated payment plan. The Defendant, BAREFOOT MANAGEMENT COMPANY, has denied the Plaintiffs entry to the units during their allotted weeks under the vacation share

conveyances, under the theory that the vacation share conveyances to the Plaintiffs were invalid.

24. These vacation share conveyances were conveyed properly pursuant to the Declaration of Restrictions, Articles of Incorporation and By-Laws of the BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., and with full knowledge of the Defendant, CAXTON, LTD.

25. There is an actual controversy as to the rights of the Plaintiffs under these vacation share conveyances and as to the rights of the Plaintiffs to possess the units during the weeks provided under the vacation share conveyances.

26. The Plaintiffs have retained the undersigned counsel and agreed to pay them a reasonable fee for their services.

WHEREFORE, Plaintiffs request this Court to declare and construe the Plaintiffs' rights as owners of vacation share interests in the Barefoot Mailman Hotel and Resort and such other relief as may be appropriate to adjudge and declare all the rights of the parties to this action, including costs and attorneys' fees, and for trial by jury as to those issues so triable.

COUNT II.

27. The Plaintiffs reallege and incorporate herein each and every allegation of Count I.

28. As part of the Stipulation between the Original Plaintiffs and the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., the Defendants, MARK LOSEE and DREW APGAR, represented to the

Plaintiffs that the vacation share conveyance certificates conveyed to the Plaintiffs as security for the payment of the indebtedness of the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., and attorneys' fees incurred, were properly executed with full authority of the conveying entities, BAREFOOT MAILMAN, LTD. and BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. See Paragraph 5 of the Stipulation.

29. The Defendants, DREW APGAR and MARK LOSEE, also represented to the Plaintiffs that CAXTON, LTD., the mortgagee of the vacation share project known as Barefoot Mailman Hotel and Resort, had knowledge of, and consented to, the conveyance of these vacation share units as security to the Plaintiffs for the indebtedness of the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC.

30. The Plaintiffs are entitled to the exclusive use and possession of those vacation units transferred in their vacation share conveyances during those times referred to on the schedule of weeks attached to each vacation share conveyance.

31. The Defendants, BAREFOOT MAILMAN, LTD., BAREFOOT MANAGEMENT COMPANY, and CAXTON, LTD., have denied the Plaintiffs possession of and entry to these vacation share units during their allotted time since about February 25, 1982. Since that date, the Defendants have unlawfully withheld, and still unlawfully withhold, possession of their allotted vacation units to the Plaintiffs.

32. By reason of the Defendants' unlawful withholding of possession to these vacation units, the Plaintiffs

have been deprived of rents and profits therefrom and will be so deprived in the future.

33. The Defendants have rented, reconveyed, or used for their own benefit those vacation units conveyed to the Plaintiffs during those weeks when the Plaintiffs were entitled to possession.

34. The Defendants, CAXTON, LTD., BAREFOOT MAILMAN, LTD., and BAREFOOT MANAGEMENT COMPANY, have converted these vacation share units to their own use to the damage of the Plaintiffs.

35. The taking and conversion of said vacation share units by the Defendants was done wilfully and maliciously with a reckless disregard for the rights of the Plaintiffs.

WHEREFORE, the Plaintiffs request this Court for the following relief:

A. For a preliminary and permanent injunction requiring the Defendants, BAREFOOT MAILMAN, LTD., BAREFOOT MANAGEMENT COMPANY, and CAXTON, LTD., to permit the Plaintiffs to use and possess those vacation units during those times when the Plaintiffs are entitled to possession under their vacation share conveyance from the Defendants, BAREFOOT MAILMAN, LTD. and BAREFOOT MAILMAN OWNERS ASSOCIATION, INC.

B. For an accounting of those rents and profits that the Defendants, BAREFOOT MAILMAN, LTD., BAREFOOT MANAGEMENT COMPANY, and CAXTON, LTD., have derived from their use or from any conveyance that they have made to others of the vacation share units

during those weeks that the Plaintiffs were entitled to possession, and for a judgment against those Defendants in favor of the Plaintiffs for those rents and profits so derived.

C. For a judgment against the Defendants, BAREFOOT MANAGEMENT COMPANY, BAREFOOT MAILMAN, LTD., and CAXTON, LTD., for damages for rents and profits of which the Plaintiffs were deprived, as the result of the Defendants' unlawful withholding of possession from the Plaintiffs of their vacation share units during those weeks the Plaintiffs were entitled to possession.

D. For any and all equitable relief which this Honorable Court deems proper.

E. For punitive damages in an amount in excess of One Hundred Thousand Dollars ($100,000.00).

F. Trial by jury.

COUNT III.

36. Plaintiffs reallege and incorporate herein all allegations of Count I and II.

37. On September 17, 1981, the Original Plaintiffs and the Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., through its President, MARK LOSEE, and DREW APGAR, entered into a written Stipulation wherein the Original Plaintiffs agreed to accept periodic payments from the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., for monies due the Original Plaintiffs under promissory notes

executed by the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., in lieu of obtaining judgment against the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC. The Stipulation is attached hereto as Exhibit A.

38. As security for the Original Plaintiffs' agreement to accept periodic payments of the monies due the Plaintiffs from PARK AVENUE INVESTMENT & DEVELOPMENT, INC., the Original Plaintiffs accepted conveyances of vacation share unit weeks at the Barefoot Mailman Hotel and Resort. These conveyances were evidenced by the vacation share conveyance certificates attached hereto as well as a non-disturbance certificate executed by the Defendant, CAXTON, LTD. The Original Plaintiffs' attorneys, ROBERT V. ROMANI and JOS. D. FARISH, JR., accepted conveyances of vacation share units as security for payment of their attorneys' fees. These certificates of vacation share conveyances are attached as Exhibits B and C.

39. The Defendant, MARK LOSEE, as President, and the Defendant, DREW APGAR, as Secretary of the Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., and BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., and as general partners in BAREFOOT MAILMAN, LTD., had the authority to convey these vacation share units as security for the indebtedness of the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., the managing and marketing entity of the timeshare project known as Barefoot Mailman Hotel and Resort. The BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. was the owner and BAREFOOT MAILMAN, LTD. was the developer of this timeshare project.

40. These vacation share conveyances were to be held by the Original Plaintiffs' attorney in escrow, pending the Defendant's, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., complying with the Stipulation Agreement.

41. In the event of default by the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., under any of the terms of the Stipulation Agreement, the Plaintiffs were to become entitled to all the rights and benefits of unit owners of the vacation share units evidenced by the vacation share conveyance certificates.

42. The Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., failed to pay the initial installment of $10,000.00 due on September 21, 1981, under this Stipulation Agreement and every payment due thereafter.

43. The Plaintiffs demanded payment from the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., but the Defendant has failed and refused to pay.

44. Plaintiffs have retained the undersigned counsel and agreed to pay them a reasonable fee for their services.

WHEREFORE, Plaintiffs demand the following relief:

A. A lien be placed upon the vacation share conveyances in favor of the Plaintiffs in the amount of their claim against the Defendant.

B. That this Court order that the vacation share

conveyance certificates held by the Plaintiffs as security be sold either by private sale by the Plaintiffs or public sale by this Court.

C. That the proceeds of such sale be applied toward satisfaction and payment of the Plaintiffs' lien, the costs of the sale and a reasonable attorneys' fee under §679.504, Florida Statutes.

D. That judgment be rendered against the Defendant for any deficiency that may arise after such sale.

E. That the Plaintiffs have such other and further relief as may be proper.

F. Trial by jury.

/s/ Mikel D. Greene
Mikel D. Greene
of Counsel

FARISH, FARISH & ROMANI
Denco Building
316 First Street
West Palm Beach, Florida 33402
Attorneys for Plaintiffs
(305) 659-3500

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CIVIL DIVISION

NO. 81-2952CA(L)01 J

DONALD I. BARKHEIMER II, and PEGGY A. BARKHEIMER, his wife

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., etc.,

Defendant.

NO. 81-2953CA(L)01 J

DONALD I. BARKHEIMER and G. LOUISE BARKHEIMER, his wife,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., etc.,

Defendant.

NO. 81-2954CA(L)01 J

HARRY RANKER and VIRGINIA RANKER, his wife,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., etc.,

Defendant.

NO. 81-2955CA(L)01 J

DENNIS REED and SANDRA REED, his wife,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., etc.,

Defendant.

NO. 81-2956CA(L)01 J

GENEVA L. BARKHEIMER,

Plaintiff,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., etc.,

Defendant.

STIPULATION

The parties, hereby stipulate and agree that it is in the best interests of all concerned to settle the above styled matter without the necessity of protracted litigation and its costs. To this end, the following agreements shall be accepted by the parties as a resolution of the issues necessarily involved in the captioned cases and any judgments flowing therefrom:

1. The total claim of the Plaintiffs, including interest as of September 10, 1981, is as follows:

DONALD I. BARKHEIMER II and PEGGY A. BARKHEIMER, his wife	$28,950.52

DONALD I. BARKHEIMER and G. LOUISE BARKHEIMER, his wife	$156,383.15
HARRY RANKER and VIRGINIA RANKER, his wife	$28,609.12
DENNIS REED and SANDRA REED, his wife	$8,269.53
MICHELLE BRITTON	$2,171.13
WILLIAM BARKHEIMER and RUTH BARKHEIMER	$2,439.31
TOTAL	$226,822.76

2. The method of paying the claims shall be periodic installments as follows:

a) The sum of $10,000.00 paid by the Defendant to the Plaintiffs no later than September 21, 1981 at or before 5:00 p.m. by Certified or Cashier's check.

b) The sum of $25,000.00 paid quarterly, commencing October 10, 1981 and continuing thereafter until Defendant's obligations to Plaintiffs and their attorney are fully satisfied.

c) 10% of the net room rental income from unsold timesharing residences based on assignments from PARK AVENUE MANAGEMENT, INC. to Defendant and Plaintiffs.

d) 6% of the gross purchase price, exclusive of closing costs, on all on-site sales at the Barefoot Mailman Hotel and Resort related to timesharing residential uses commencing October 1, 1981, by virtue of a marketing contract providing

for the payment for consulting services in the amount of the said 6%.

e) Plaintiffs shall have the right to inspect any and all records at reasonable times and places to verify rental income and sales,

3. All sums required herein shall be paid by Defendant to the Plaintiffs c/o Robert V. Romani, Esq., 316 First Street, West Palm Beach, Florida 33401, and shall be divided according to the following percentages:

I. 13% of the payment to Donald I. Barkheimer II and Peggy A. Barkheimer, his wife

II. 68% of the payment to Donald I. Barkheimer and G. Louise Barkheimer, his wife

III. 13% of the payment to Harry Ranker and Virginia Ranker, his wife

IV. 4% of the payment to Dennis Reed and Sandra Reed, his wife

V. 1.0% of the payment to Michelle Britton

VI. 1.0% of the payment to William and Ruth Barkheimer

4. Plaintiffs shall give Defendant a discount of 10% of the then existing balance if payment is made in full.

5. The payments provided hereinabove and for attorneys' fees as set forth in Paragraph 9 shall be secured by vacation-share unit weeks at the Barefoot Mailman Hotel & Resort as shown on schedules A and B. These unit weeks shall be conveyed free of encumbrances to Plaintiffs and

their attorneys no later than October 2, 1981 in the manner set forth in the Declarations of Restrictions, Articles of Incorporation and By-Laws of the Barefoot Mailman Homeowners Association, Inc. and shall be evidenced by a "VACATION SHARE CONVEYANCE" certificate as set forth in the by-laws, together with a non-disturbance certificate relative to unit weeks in attached schedules. So long as these units are held as security, Plaintiffs and their attorney shall not be responsible for any assessments or other common expenses for said units.

By signing this agreement, Defendant and its President and Secretary, individually, warrants that these conveyances have been properly executed with full authority of the conveying entity and that the grantor does, in fact, have proper title to these units and proper authority to execute non-disturbance certificates.

The aforedescribed conveyances of vacation share unit weeks shall be held in escrow by Plaintiff's attorney. In the event that the Defendant defaults under any of the terms and conditions set forth herein the parties agree that the conveyances of unit weeks shall become immediately effective and shall be recorded in the public records in and for Broward County, Florida. Plaintiffs and their attorney shall thereupon become entitled to all the rights of a unit owner as set forth in the Declaration of Restrictions, Articles of Incorporation and By-Laws of the Barefoot Mailman Homeowners Association, Inc.

The parties further agree that judgment may be entered against Defendant without further notice or hearing for all sums then due and owing after deducting the value of the security and payments and income derived by Plaintiffs or their attorneys pursuant to the terms of this

agreement. Affidavit of the Plaintiffs or their attorneys shall be sufficient evidence upon which the Court can enter judgment.

6. The unit weeks designated as security may be used by the secured party free of any common assessments or expenses pending full satisfaction of Defendant's obligations under this agreement. However, any rental income derived by the secured party from renting said units to third parties shall be deducted from Defendant's obligations. The secured party shall be entitled to trade unit weeks set forth in Schedules A and B for personal use as determined by the availability of other comparable units.

7. Any remaining unit weeks available after satisfaction of the claim shall be considered the property interest of the Defendant.

8. In the event the lessee of the restaurant and lounge called "Charley Brown's" at the Barefoot Mailman Hotel & Resort decides to exercise its option to purchase such restaurant and lounge, the value of any chattel mortgage payments or periodic payments under the purchase terms shall be additional security to this agreement subject to the interest of the mortgagee for the real property until the claim of Plaintiffs is discharged according to the terms of this Stipulation. It is contemplated that the Defendant shall not receive in excess of $100,000.00 cash from the sale of the restaurant and lounge and that there will be an approximate $150,000.00 mortgage. In the event, however, that Defendant receives in excess of $100,000.00 cash, that sum shall be used toward satisfaction of Defendant's obligations to Plaintiffs as set forth in this agreement.

9. Defendant agrees to pay Plaintiffs' attorney,

Robert V. Romani, Esq., the sum of $75,500.00 attorneys' fee in this matter. In the event, however, that Defendant pays $32,500.00 prior to January 1, 1982 and $32,500.00 on or before March 30, 1982, the total fee shall be $65,000.00.

10. The attorneys' fee set forth above shall be secured by unit weeks shown on Schedule B. Said unit weeks shall be conveyed to Jos. D. Farish, Jr., Esq. and Robert V. Romani, Esq., d/b/a Farish, Farish & Romani, subject to all the terms and conditions of Paragraphs 5, 6, and 7 of this Stipulation as if those provisions were fully set forth in this paragraph.

11. It is agreed between the parties and the counsel for Plaintiffs that out of each payment made by Defendant to Plaintiffs one-third (⅓rd) shall be deducted toward satisfaction of attorneys' fees until such time as said fees are paid in full. Thereafter, all payments shall be applied toward the reduction of defendant's obligation to Plaintiffs.

12. The parties agree that the court shall retain jurisdiction of the parties and this cause for the purpose of enforcing the terms of this agreement.

13. In any action to enforce the terms of this agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs, including those for appellate proceedings.

14. This agreement shall be binding on the parties and their heirs, successors or assigns. This agreement shall be recorded in the public records of Broward County, Florida, and shall constitute a lien, to the extent of the obligation set forth herein, on the land situate in Broward

County, Florida, to-wit:

1061 Hillsboro Mile, Hillsboro Beach, Florida (as more fully described in the survey at page B-1 et.seq. of the circular of "The Barefoot Mailman")

DATED this 17th day of September, 1981.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC.

Corporate Seal

BY: /s/ Signed
President

/s/ Signed

Attest:

/s/ Signed
Witnesses as to President and Secretary

/s/ Signed
Secretary

/s/ Signed

/s/ Signed
Donald I. Barkheimer II

/s/ Signed
Witnesses as to Donald I. Barkheimer II and Peggy A. Barkheimer

/s/ Signed
Peggy A. Barkheimer, his wife

/s/ Signed

/s/ Signed
Donald I. Barkheimer

/s/ Signed
Witnesses as to Donald I. Barkheimer and G. Louise Barkheimer, his wife

/s/ Signed
G. Louise Barkheimer, his wife

/s/ Signed

/s/ Signed
Harry Ranker

/s/ Signed
Witnesses as to Harry Ranker and Virginia Ranker, his wife

/s/ Signed
Virginia Ranker, his wife

/s/ Signed

/s/ Signed
Dennis Reed

/s/ Signed
Witnesses as to Dennis Reed and Sandra Reed, his wife

/s/ Signed
Sandra Reed, his wife

/s/ Signed

/s/ Signed
Michelle Britton

/s/ Signed
Witnesses as to Michelle Britton

/s/ Signed

/s/ Signed
William Barkheimer

/s/ Signed
Witnesses as to William Barkheimer

/s/ Signed

/s/ Signed
Ruth Barkheimer

/s/ Signed
Witnesses as to Ruth Barkheimer

/s/ Signed

/s/ Signed
Robert V. Romani, Esq.
Attorney for Plaintiffs

/s/ Signed
Witnesses as to Robert V. Romani

SCHEDULE A

The following unit weeks shall secure payment due Plaintiffs as set forth in Paragraph 1 of this Stipulation:

1. Unit 214 WEEKS 1 through 5 Market Value $47,500.00

2. Unit 215 WEEKS 2 through 6 Market Value 48,000.00

3. Unit 219 WEEKS 1 through 3 Market Value 27,600.00

4. Unit 203 WEEKS 1 through 5 Market Value 52,200.00

5. Unit 303 WEEKS 1 through 5 Market Value 52,200.00

SCHEDULE B

The following unit weeks shall secure payment of the attorneys' fees stated in Paragraph 9 of this Stipulation:

1. Unit 124 WEEKS 1 and 2 Market Value $23,600.00

2. Unit 224 WEEKS 2, 3 and 10 Market Value 35,400.00

3. Unit 202 WEEKS 9 Market Value 12,800.00

4. Unit 324 WEEKS 2 Market Value 12,400.00

APPENDIX "B"

AFFIRMATIVE DEFENSE

Defendants PARK AVENUE INVESTMENT & DEVELOPMENT, INC., MARK LOSEE, and DREW APGAR allege as an Affirmative Defense the following:

1. The stipulation upon which the present is based was a consolidation of the various instruments upon which actions no. 81-2952 CA(L) 01 J, 81-2953 CA(L) 01 J, 81-2954 CA(L) 01 J, 81-2955 CA(L) 01 J, and 81-2956 CA(L) 01 J were founded. Those instruments were the reduction to promissory notes of a series of prior promissory notes. The sum total of the amounts claimed when juxtaposed with the amounts actually paid in by the Plaintiffs show that the stipulation and all previous instruments constitute usurious loans with interest exceeding 45%, which rate was wilfully and knowingly charged. Said loans constitute criminal usury and are void pursuant to the provisions of Florida statute 687.071.

2. Defendants were forced to agree to the usurious payments to Plaintiffs throughout their transactions because Plaintiffs realized that Defendants were unable to repay the full amount paid in by Plaintiffs and Plaintiffs threatened to destroy the time share development known as The Barefoot Mailman by filing suit for outstanding amounts unless Defendants agreed to pay usurious rates of interest.

APPENDIX "C"

COUNTERCLAIM

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CIVIL DIVISION

NO. 82-3158 CA(L) O1 E

DONALD I. BARKHEIMER II, et al.,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., et al.,

Defendants

COUNTERCLAIM

COUNT I

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., hereinafter referred to as Park Avenue, sues Plaintiffs DONALD I. BARKHEIMER, II, and PEGGY BARKHEIMER, hereinafter referred to as Barkheimers II, and states:

1. On February 20, 1981, in Palm Beach County, Florida, the Barkheimers II loaned to Park Avenue the sum of $20,000. It was agreed between the parties at that time that Barkheimers II would be repaid the $20,000. plus

$3,800. interest within fourteen days. An agreement to this effect was prepared but has been misplaced. The effective interest rate for this transaction was 495.3% per annum.

2. Park Avenue did not pay the $23,800. but instead on March 4, 1981, a new note was signed by Park Avenue with the principal amount of $23,800. and additional interest of $4,370. for a total repayable amount of $28,170. This amount was to be repaid within fourteen days. The interest of $4,370. on the principal amount of $23,800. payable within fourteen days comprises an effective interest rate of 478.7% per annum. A copy of said promissory note is labeled Exhibit 1, attached hereto and by reference made a part of this Counterclaim.

3. The $28,170. was not repaid. Instead, on March 17, 1981, a new note was entered into for a principal amount of $28,170. which was the principal and accrued interest on the prior loan plus interest in the amount of $5,381.18, the total amount payable within fourteen days of the date of said note. The total repayable amount at that time was $33,551.18. The interest payment of $5,381.18 on the principal of $28,170. is an effective interest rate of 498% per annum. The total amount repayable in principal and interest became $33,551.18. A copy of said note is labeled Exhibit 2, attached hereto and by reference made a part of this Counterclaim.

4. On March 30, 1981, Park Avenue paid to Barkheimers II the amount of $14,161. On the same date a new note was executed to Barkheimers II in the amount of $28,025.90. A copy of said promissory note is labeled Exhibit 3, attached hereto and by reference made a part of this Counterclaim. At no time did Barkheimers II ever give to Park Avenue any sum in addition to the $20,000. paid

on February 20, 1981. The promissory note of March 30, 1981 which is $8,025.90 over and above the $20,000. paid by Barkheimers II when coupled with the $14,161. paid to Barkheimers II comprises a total of $22,186.90 over and above the $20,000. paid by Barkheimers II, and constitutes interest. This interest was either paid or accrued during the time period from February 20, 1981 to March 30, 1981 and is approximately 1,000% interest per annum.

5. The March 30, 1981 promissory note was the subject of the complaint in Case No. 82-2952 CA(L) 01 J, and was incorporated in the stipulation which is the subject matter of Counterdefendants' complaint in this cause.

6. Barkheimers II were well aware that the interest being charged was well in excess of 18%.

7. Of the $14,161. paid to Barkheimers II, $13,551. constituted interest.

8. Pursuant to the provisions of 637.04 Florida Statutes Park Avenue is entitled to judgment to twice the interest paid or $27,102.

9. Park Avenue has had to employ the services of the undersigned attorney to represent it in this matter and has agreed to pay him a reasonable fee. There is no legitimate defense available to Plaintiffs and according to 57.105 FSA, Park Avenue is entitled to attorneys fees.

WHEREFORE, Park Avenue demands judgment against Barkheimers II in the amount of $27,102. plus interest, costs and attorneys fees.

COUNT II

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., hereinafter referred to as Park Avenue, sues DONALD BARKHEIMER and LOUISE BARKHEIMER, hereinafter referred to as Barkheimers I, and states:

10. Barkheimers I loaned to Park Avenue, in Palm Beach County, Florida, the following sums on the following dates:

1/15/81	$75,000.00
1/30/81	10,000.00
2/3/81	21,000.00
2/20/81	5,000.00
2/25/81	22,000.00
Total	$133,000.00

11. Barkheimers I and their assigns Michelle Britton and Paul Britton were repaid the following sums on the following dates:

1/17/81	$ 750.00
2/13/81	11,900.00
2/13/81	1,900.00
2/13/81	1,900.00
2/13/81	1,200.00
2/13/81	800.00
2/13/81	190.00
2/25/81	1,900.00
2/25/81	1,900.00
2/25/81	190.00
3/13/81	5,950.00
3/30/81	11,155.28
3/30/81	3,237.10
3/30/81	4,045.00

4/13/81		8,025.00
4/13/81		2,000.00
4/17/81		2,012.00
5/6/81		3,158.00
	Total	$62,217.38

12. Of these payments to Barkheimers I, only $20,000. constituted repayments to principal. The balance constitute interest payments.

13. Between January and April, 1981, Park Avenue executed a series of promissory notes in favor of Barkheimers I.

14. On July 2, 1981, suit was instituted by Barkheimers I against Park Avenue for collection of the various monies claimed to be owed to them pursuant to the above related transactions.

15. On September 10, 1981, the parties entered into a stipulation which is the subject matter of this lawsuit wherein the amount agreed upon to be paid to Barkheimers I was $156,383.15.

16. A total interest payment paid to Barkheimers I as of that date was $42,217.38. The amount of principal outstanding and owed to Barkheimers I as of that time was $113,000. The total interest claimed by Barkheimers I, therefore, as of the date of the stipulation was $42,217.38 already paid, plus $43,383.15 claimed by them as additional interest which had not been paid. The interest rate was, therefore, clearly in excess of the 18% allowed by Florida Statute 687.03.

17. Barkheimers I were well aware that the interest

rate which they were charging was well in excess of the 18% allowed by Florida statutes.

18. Pursuant to Florida Statute 687.04 Park Avenue is entitled to judgment to twice the interest paid or $84,434.76.

19. Park Avenue has had to employ the services of the undersigned attorney to represent it in this matter and has agreed to pay him a reasonable fee. There is no legitimate defense available to Plaintiffs and according to 57.105 FSA, Park Avenue is entitled to attorneys fees.

WHEREFORE, Park Avenue demands judgment against Barkheimers I in the amount of $84,434.76, plus interest, costs and attorneys fees.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Mikel D. Greene, Esquire, Attorney for Plaintiffs, 316 First Street, West Palm Beach, Florida 33402, and Preston Mighdoll, Attorney for Defendants and Crossclaimants, 3003 South Congress Avenue, Suite 1-A, Palm Springs, Florida, by mail, this 27th day of September, 1982.

O'CONNOR, BAYLOR, CALLAS
& ELLIOTT
8895 North Military Trail
Suite 301-D
Palm Beach Gardens, FL 33410
627-0400

By: _____
Edward F. O'Connor

APPENDIX "D"

MOTION TO DISMISS

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CASE NO. 82-3158 CA(L) O1 E

DONALD I. BARKHEIMER II, et al.,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT,
INC., et al.,

Defendants

MOTION TO DISMISS

The Plaintiffs, through their undersigned counsel, request this Court for an Order dismissing the counterclaim of the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., and as grounds therefor say:

1. That the counterclaim in Count I fails to state a cause of action as the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., has waived its right to claim usury against the Defendant, DONALD I. BARKHEIMER, II., and PEGGY BARKHEIMER, pursuant to the Stipulation that was entered into between the Defendant and these Plaintiffs which is the subject matter of the Plaintiffs' Complaint.

2. The counterclaim at Count II should be dismissed for failure to state a cause of action as the Defendant has waived its right to counterclaim for usury pursuant to the Stipulation entered into between the parties which is the subject matter of the Plaintiffs' Complaint. The counterclaim at Count II also fails to attach the promissory notes claimed to be usurious between the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., and the Plaintiffs, DONALD BARKHEIMER and LOUISE BARKHEIMER.

/s/ Signed
Mikel D. Greene
of Counsel

FARISH, FARISH & ROMANI
Denco Bldg., 316 First Street
P.O. Box 3887
West Palm Beach, Florida 33402
Attorneys for Plaintiffs
(305) 659-3500

APPENDIX "E"

ORDER STRIKING AFFIRMATIVE DEFENSES & DISMISSING COUNTERCLAIM

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CASE NO. 82-3158 CA(L) O1 E

DONALD I. BARKHEIMER II, et al.,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., et al.,

Defendants

ORDER GRANTING MOTION TO STRIKE
AND MOTION TO DISMISS

THIS CAUSE came on to be heard upon the Motion to Strike the affirmative defenses of the Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., DREW APGAR and MARK LOSEE, and the Motion to Dismiss the Counterclaim of the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC. The Court having heard argument of counsel and being otherwise fully advised in the presimes, it is

ORDERED as follows:

1. That the Motion to Strike affirmative defenses of

the Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., DREW APGAR and MARK LOSEE, is hereby granted.

2. That the Motion to Dismiss the Counterclaim of the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., is hereby granted.

DONE AND ORDERED this 21st day of October, 1982.

/s/ Signed
CIRCUIT JUDGE

Copies to counsel

APPENDIX "F"

MOTION FOR SUMMARY JUDGMENT

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CASE NO. 82-3158 CA(L) O1 E

DONALD I. BARKHEIMER II, et al.,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., et al.,

Defendants

MOTION FOR SUMMARY JUDGMENT

The Plaintiffs, through their undersigned counsel, request this Court for an Order granting summary judgment to the Plaintiffs as to Count I and Count III of Plaintiffs' Complaint and as to the Counter-Claim of the Defendants, BAREFOOT MAILMAN OWNERS ASSOCIATION, INC., BAREFOOT MANAGEMENT COMPANY, CAXTON, LTD. and BAREFOOT MAILMAN, LTD., and as grounds therefor say:

1. That there is no genuine issue as to the fact that the Plaintiffs and the Defendants, PARK AVENUE INVESTMENT & DEVELOPMENT, MARK LOSEE and DREW APGAR, entered into a Stipulation in which the Defendants, PARK AVENUE INVESTMENT &

DEVELOPMENT, INC., MARK LOSEE and DREW APGAR, acknowledged an indebtedness to the Plaintiffs and agreed to convey vacation share units in the Barefoot Mailman time share resort as security for the repayment of this indebtedness. A copy of this Stipulation is attached to the Complaint as Exhibit A.

2. There is no genuine issue as to the fact that at the time this Stipulation was entered into, the Defendants, MARK LOSEE and DREW APGAR, were general partners in Barefoot Mailman, Ltd. and officers of Barefoot Mailman Owners Association which were the two entities that owned the Barefoot Mailman time share resort.

3. There is no genuine issue as to the fact that the Defendants, MARK LOSEE and DREW APGAR, represented to the Plaintiffs that they had authority to enter into this Stipulation and to make the vacation share conveyances which were given to the Plaintiffs for security of the indebtedness admitted under the Stipulation. A copy of the conveyances to the Plaintiffs is attached to the Complaint as Exhibits B and C.

4. There is no genuine issue as to the fact that at the time of Stipulation (Exhibit A) the Defendants, MARK LOSEE and DREW APGAR, had the authority to transfer vacation share conveyances in the Barefoot Mailman as general partners and officers of the owners of the Barefoot Mailman time share resort.

5. There is no genuine issue as to the fact that the Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., defaulted under the terms of the Stipulation and did not repay any of the monies recognized as due the Plaintiffs under the Stipulation.

6. There is no genuine issue as to the fact that under the terms of the Stipulation, the Plaintiffs were to become entitled to all the rights of unit owners under the terms of the conveyances made to them under the Stipulation.

7. There is no genuine issue as to the fact that the conveyances received by the Plaintiffs are properly executed.

8. There is no genuine issue as to the fact that the Defendants, MARK LOSEE and DREW APGAR, represented to the Plaintiffs that the mortgagee of the Barefoot Mailman time share resort, Defendant, CAXTON, LTD., had approved the transfer of the conveyances to the Plaintiffs under the Stipulation.

WHEREFORE, the Plaintiffs are entitled to a Summary Judgment as a matter of law as to Counts I and III of the Plaintiffs' Complaint and as to the Counter-Claim of the Defendants, CAXTON, LTD., BAREFOOT MAILMAN OWNERS ASSOCIATION, BAREFOOT MAILMAN, LTD. and BAREFOOT MANAGEMENT COMPANY, and that the Plaintiffs are the rightful owners of the vacation share units conveyed to them under the Stipulation.

/s/ Signed
Mikel D. Greene
of Counsel

FARISH, FARISH & ROMANI
Denco Bldg., 316 First Street
P.O. Box 3887
West Palm Beach, Florida 33402
Attorneys for Plaintiffs
(305) 659-3500

I HEREBY CERTIFY that a true copy hereof has been furnished EDWARD F. O'CONNOR, ESQ., Suite 301 D, 8895 N. Military Tr., Palm Beach Gardens, Fl., and PRESTON MIGHDOLL, ESQ., Suite 1A, 3003 S. Congress Ave., Lake Worth, Fl. 33461, by mail, this 17th day of November, 1982.

/s/ Signed
Mikel D. Greene
Attorney

APPENDIX "G"

MOTION TO SET ASIDE STIPULATION

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CASE NO. 81-2952 CA(L) O1 J

DONALD I. BARKHEIMER II, and PEGGY A. BARKHEIMER, his wife,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., etc.,

Defendants

MOTION TO SET ASIDE STIPULATION

The Defendants move this court for an order setting aside the Stipulation entered into in this cause on the grounds that said stipulation is usurious and unenforceable under Florida Statute 687.171.

I HEREBY CERTIFY that a copy of the foregoing has been furnished to Mikel D. Greene, Farish, Farish & Romani, Denco Bldg., 316 First Street, West Palm Beach, Fl 33402, and Preston Mighdoll, Kohl, Springer, Springer, Varner, Mighdoll & Salnick, 3003 South Congress Avenue, Suite 1A, Palm Springs, Florida 33461, by mail, this 18th day of November, 1982.

O'CONNOR, BAYLOR, CALLAS
& ELLIOTT
8895 North Military Trail
Suite 301-D
Palm Beach Gardens, Fl 33410
627-0400

By: /s/ Signed
Edward F. O'Connor

APPENDIX "H"

ORDER GRANTING SUMMARY JUDGMENT

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT OF FLORIDA,
IN AND FOR PALM BEACH COUNTY

CASE NO. 82-3158 CA(L) O1 E

DONALD I. BARKHEIMER II, et al.,

Plaintiffs,

vs.

PARK AVENUE INVESTMENT & DEVELOPMENT, INC., et al.,

Defendants

ORDER GRANTING
PARTIAL SUMMARY JUDGMENT

THIS CAUSE came on to be heard upon the Plaintiff's Motion for Summary Judgment. The Court, having considered the pleadings and the depositions and having heard argument of counsel, finds that there is no genuine issue as to the following material facts:

A Stipulation was entered into between the Plaintiffs and the Defendants, MARK LOSEE, DREW APGAR and PARK AVENUE INVESTMENT & DEVELOPMENT, INC., on September 17, 1981, which is the subject matter of this lawsuit. This Stipulation was entered into between these parties in settlement of litigation brought by the Plaintiffs to recover monies owed to them by the

Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC. As part of this Stipulation, vacation share conveyances of time share unit weeks in the Barefoot Mailman Hotel & Resort were conveyed to the Plaintiffs as security for and satisfaction of the obligation owed to the Plaintiffs by PARK AVENUE INVESTMENT & DEVELOPMENT, INC. and as security for and satisfaction of the Plaintiffs' attorneys' fees. The Defendants, DREW APGAR and MARK LOSEE, had the apparent authority to enter into this Stipulation with the Plaintiffs and had the apparent authority to transfer vacation share unit weeks in the Barefoot Mailman Hotel & Resort to the Plaintiffs pursuant to this Stipulation. The Defendant, PARK AVENUE INVESTMENT & DEVELOPMENT, INC., defaulted under the terms of the Stipulation. Under the terms of the Stipulation, the Plaintiffs became entitled to all the rights of a unit owner in the unit weeks conveyed to them under the Stipulation (See Paragraph No. 5 of the Stipulation). The vacation share conveyances to the Plaintiffs were properly executed by a general partner of the Defendant, BAREFOOT MAILMAN, LTD., and an officer of the Defendant, BAREFOOT MAILMAN OWNERS ASSOCIATION, INC. There is an actual controversy as to the rights of Plaintiffs under these vacation share conveyances as the Defendants, BAREFOOT MANAGEMENT COMPANY, BAREFOOT MAILMAN, LTD., and CAXTON, LTD., have demanded that the Plaintiffs redeliver their unit weeks to these Defendants and the Defendant, BAREFOOT MANAGEMENT COMPANY, has denied the Plaintiffs entry to the vacation units. Therefore, it is

ORDERED AND ADJUDGED that the plaintiffs are entitled to a judgment as a matter of law and the Plaintiffs are entitled to all the rights of a unit owner in the

following vacation share units conveyed to them pursuant to the Stipulation dated September 17, 1981. The Plaintiffs, DONALD BARKHEIMER and G. LOUISE BARKHEIMER, are valid unit owners of vacation share Unit 109, weeks 25 through 28; Unit 203, weeks 1 through 5, Unit 214, weeks 1 through 5; Unit 215, weeks 2 through 6; Unit 219, weeks 1 through 3, Unit 222, weeks 9, 10, 51 and 52; Unit 224, week 16 and Unit 303, weeks 1 through 5. The Plaintiffs, JOS. D. FARISH, JR. and ROBERT V. ROMANI, are valid unit owners of Unit 124, weeks 1 and 2; Unit 224, weeks 2, 3 and 10; Unit 324, week 2 and Unit 202, week 9. The Plaintiffs, DONALD I. BARKHEIMER, II., and PEGGY A. BARKHEIMER, are valid unit owners of Unit 203, weeks 2 and 9; Unit 214, week 1 and Unit 215, week 4. The Plaintiff, DENNIS REED, is valid unit owner of Unit 203, week 5 and Unit 209, week 26. Plaintiffs, HARRY RANKER and VIRGINIA RANKER, are valid unit owners of Unit 203, weeks 1 and 6 and Unit 215, weeks 2 and 3. All of the vacation share units referred to above are in the Barefoot Mailman Hotel & Resort in Broward County, Florida.

FURTHER ORDERED and ADJUDGED, that jurisdiction is retained by this Court for the purpose of taxing costs and attorneys' fees upon proper motion and notice, and for the purpose of entering a Final Judgment consistent with the Declaratory Relief granted herein. Plaintiffs' claim for compensatory and punitive damages shall proceed to trial as scheduled.

DONE AND ORDERED, in West Palm Beach, Florida, this 7th day of January, 1983.

/s/ Signed
CIRCUIT COURT JUDGE

Copies to Counsel.